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JUN 12 1995

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
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The Council of Independent Communication Suppliers (CICS), pursuant to Section 1.415 of the rules and regulations of the Federal Communications Commission (FCC or Commission), hereby submits these Reply Comments in response to the various comments filed regarding the Commission's Second Report and Order and Second Further Notice of Proposed Rule Making released in the above-captioned proceeding on April 17, 1995.

I. Preliminary Statement

1. CICS is an unincorporated association of entities engaged in serving the needs of private radio eligibles, particularly those located in small and rural communities throughout the United States. CICS' membership is open to SMR operators, radio dealers, equipment suppliers, communications engineers and consultants. The Council was formed to give communications providers in small and rural communities a voice in the FCC's policy making process. CICS is an independent market council of the Industrial Telecommunications Association.

II. Introduction

2. As it has in the past, CICS questions whether spectrum auctions represent an efficient and equitable means of assigning channels. However, the organization's members are, in some cases, starved for spectrum, and clearly some of these members are planning to take part in the 900 MHz spectrum auction.

3. The assignment of bidding credits is one of the more prominent issues involved in this proceeding. In CICS' view, bidding credits frame the dilemma that the FCC faces in auctioning spectrum which is already inhabited. Should small-business bidders be assisted, perhaps at the expense of the existing incumbents? These are questions that the Commission will continually run into

as it attempts to auction 900 MHz and 800 MHz band specialized mobile radio spectrum or the spectrum allocated to other radio services in which incumbent licensees already use the allocated frequencies. Clearly, the FCC has some delicate decision making to do in what RAM Mobile Data USA Limited Partnership termed the "first experience in an 'odd lots' auction."

4. CICS believes it is imperative that the Commission support small business in this 900 MHz proceeding. The FCC's action to preserve the 900 MHz spectrum in twenty 10-channel blocks was sound because it invites small-business involvement. The protection for incumbent service providers appears to be adequate, with full, co-channel and adjacent channel protection from MTA licensees.

5. CICS supports the Commission's determination that mandatory relocation of incumbents would not be feasible in the 900 MHz band, because no alternative 900 MHz SMR channels are available for relocation. Instead, MTA licensees can negotiate mergers, buyouts, frequency swaps, or similar arrangements with incumbent systems on a voluntary basis.

III. Small Business Definition

6. CICS applauds the Commission's decision to give bidding credits to small businesses. Delineations for credits based on

race or gender may not survive court review. Nextel Communications, Inc., noted that "the large percentage of minority-owned and women-owned small businesses...should fulfill Congress' intent to ensure participation by designated entities."

7. CICS also supports the FCC's definition of small business: an average of \$3 million gross revenues over three years. This is a small, if belated, recognition by the Commission that it created the SMR service for small entrepreneurs. As Geotek Communications, Inc., stated, "[g]ranting credits to entities with revenues greater than the \$3 million limit will unfairly favor these potential competitors over incumbents." However, the FCC should be using Rand McNally's Basic Trading Areas (BTA), rather than the Major Trading Areas (MTA) if it truly wants small-business involvement. It would be much more feasible for a small SMR to provide service over a BTA.

IV. Bidding Credits

8. Two of the 900 MHz SMR band's largest incumbents, Geotek and RAM, saw bidding credits as potentially hurting them competitively in the auction. RAM said bidding credits would invite non-incumbents to engage in "greenmail" in bidding for encumbered spectrum blocks. Likewise, Geotek noted that the FCC is "not compelled to apply any bidding credits to occupied spectrum" to fulfill its congressional mandate to provide opportunities for

designated entities.

9. CICS is on record in the 800 MHz proceeding supporting incumbents' rights, and this proceeding is similar in many ways.¹ Companies, such as RAM, Geotek and a multitude of others, have, in good faith, built out systems in the 900 MHz band to provide communications service to the public. Any auction of spectrum should not have harmful effects upon the businesses of incumbent licensees.

10. CICS supports any rule that helps small business in this auction. However, due to the Commission's construction and coverage requirements, a small business applicant has only a marginal chance of successfully entering an MTA market where the most populous areas are already covered by incumbent licensees.² "Throughout the debate about whether or not incumbent frequency blocks even should be subject to auction, a constant issue has been whether anyone truly interested in building and operating its own

¹ "CICS is torn between the desire to support, if possible, the efforts of wide-area SMR licensees, while at the same time recognizing that there is a serious, and perhaps unresolvable, tension between the interests of wide-area licensees and the interests of other SMR licensees." — Reply Comments of the Council of Independent Communication Suppliers, PR Docket No. 93-144, PP Docket No. 93-253.

² "We will require 900 MHz MTA licensees to provide coverage to one-third of the population of their service areas within three years of initial license grant and to two-thirds of the population of their service area within five years." -- Second Report and Order and Second Further Notice of Proposed Rule Making, PR Docket No. 89-553, PP Docket 93-253, GN Docket No. 93-252.

system, other than the existing licensee, would bid on frequency blocks in MTAs where most of the area has been built by the incumbent and therefore would not be available to a new entrant," RAM said. CICS believes, with or without bidding credits, a small business faces an uphill battle to establish a system using an incumbent spectrum block in one of the top MTAs.

V. Upfront Payment

11. While Nextel agreed with most of the proposed auction rules, it said the upfront payment (2 cents times the amount of megahertz times the total population covered) was insufficient to discourage insincere bidders. CICS believes the auction process itself is enough to eliminate speculators. A higher upfront fee would only discourage bona fide, although small, bidders from taking part in the auction.

12. CICS believes Nextel's idea of stricter penalties for bid-withdrawal is a better solution to the problem of anti-competitive bidding. "A party intent on bidding up the price of an MTA license, knowing that a particular incumbent has a vested interest therein and must obtain it, may place a bid in each round to raise the price," Nextel said. "At some point, the incumbent will concede, the other bidder will withdraw its high bid, and the incumbent will be left to purchase the license at an artificially-inflated price. The solution, in Nextel's opinion, is to impose a

large punitive penalty on applicants who withdraw their bids in such circumstances, such as forfeiture of the upfront payment. CICS supports this approach.

13. The FCC has also proposed a 10 percent down payment option that would allow the remainder to be paid off in installments over the next ten years. CICS believes the down payment and installment payment proposals help open the door to smaller businesses. Accordingly, CICS strongly supports this result.

14. Southern California Edison Company, which was authorized for three 10-channel blocks in the SMR spectrum at 900 MHz by a waiver in 1991, called for the FCC to make sure bidders have detailed information about the incumbents in the 900 MHz band. CICS strongly agrees; companies must be well-informed of incumbent activity to make appropriate bids.


VI. Conclusion

15. Even as the Commission changes its rules to accommodate wide-area SMR systems, it cannot forget that the market is best served by a diversity of mobile radio services, both local-area and wide-area. One size will not fit all. The private users that subscribe to these SMR services have unique needs, most often catered to best by smaller service providers.

16. The bidding process at 900 MHz will set precedence for future spectrum auctions, possibly at 800 MHz. Therefore, the FCC should set a course that respects the rights of incumbents as well as smaller businesses.

WHEREFORE, THE PREMISES CONSIDERED, the Council of Independent Communication Suppliers respectfully submits these Reply Comments and urges the Federal Communications Commission to act in accordance with the views expressed herein.

**COUNCIL OF INDEPENDENT
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Date: June 12, 1995